Office-Supreme Court, U.S.
FILED
MAY 13 1981
ALEXANDER L. STEVAS,
CLERK

80-1965

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

H. COLEMAN YEATTS,

Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

EDWARD T. M. GARLAND
GARLAND, NUCKOLLS & CATTS, P.C.
1012 Candler Building
Atlanta, Georgia 30303
404/577-2225

Attorney for Petitioner

QUESTIONS PRESENTED

1. Whether collectors' gold coins, formerly minted by the United States, are such coins contemplated by 18 U.S.C. 485?

2. Whether Congress has the power to proscribe penalties for possession of coins which are no longer currency?

TABLE OF CONTENTS

	Page
Questions presented	i
Opinions below	1
Jurisdiction	1
Constitutional and statutory provisions	2
Statement	3
Reasons for granting the writ	8
Conclusion	10
Certificate of Service	10
Appendix A	A-1
Appendix B	B-1
Appendix C	C-1
Appendix D	D-1

TABLE OF AUTHORITIES

Cases:	Page
Equitable Life Assurance Society of the U.S. v. Grovesnor, 426 F.Supp. 67 (D.C. Tenn. 1976)	5, 7
Baender v. Barnett, 255 U.S. 24 (1920)	7
Julliard v. Greenman, 110 U.S. 421 (1884)	7
Legal Tender Cases, 12 Wall. 457, 20 L.Ed. 287	7
United States v. Hudson & Goodwin, 11 U.S. (7 Cranch), 32 (1812)	7
Logan v. United States, 144 U.S. 283 (1892)	7
United States v. O'Brien, 391 U.S. 367 (1968)	7
United States v. Hay, 545 F.2d 491 (5th Cir. 1977)	8
United States v. Johnson, 570 F.2d 52 (5th Cir. 1976)	8

TABLE OF AUTHORITIES—Continued

Page

Constitution and Statute:

Article I, Sec. VIII, cl. 5 ..... 2, 6, 7
Article I, Sec. VIII, cl. 6 ..... 2, 6, 7
Article I, Sec. VIII, cl. 18 ..... 2, 6, 7
18 U.S.C. 485 ..... i, 2, 3, 6, 7, 8
18 U.S.C. 486 8
28 U.S.C. 1254 (1) 1
31 U.S.C. 315(b) 3, 4, 5
31 U.S.C. 317(c) 5
31 U.S.C. 318, 319 5
31 U.S.C. 392 4
31 U.S.C. 442, 443 ..... 4, 5
31 U.S.C. 446 ..... 3, 5
31 U.S.C. 457 5
31 U.S.C. 462 4
31 U.S.C. 463 ..... 3, 5, 7

Miscellaneous:

Pub. L. 89-81 ..... 3, 4, 5
Pub. L. 93-110, Sec. 3(a) & (b) 4
1965 U.S. Code Cong. & Adm. News, p. 2299 4
1965 Code Cong. & Adm. News, p. 270 ..... 4, 5
87 Stat. 352 4

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

H. COLEMAN YEATTS,

Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

H. Coleman Yeatts petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The panel opinion is reported at 639 F.2d 1186 (5th Cir. 1981) [App. A. *infra* A-1]. The motion for rehearing was denied [App. B. *infra* B-1].

JURISDICTION

The panel decision was decided on March 6, 1981. A motion for rehearing was filed and overruled on April 13, 1981. A motion for stay of mandate, pending appeal to this Court, was granted on April 23, 1981 [App. C. *infra* C-1] with Appellant being given twenty (20) days to file this petition.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Sec. VIII, cl. 5 is as follows:

5. *Coins, weights, and measures.* To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Article I, Sec. VIII, cl. 6 is as follows:

6. *Counterfeiting.* To provide for the Punishment of counterfeiting the Securities and *current* Coin of the United States;

Article I, Sec. VIII, cl. 18 is as follows:

18. *Laws necessary, etc., making.* To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

18 U.S.C. 485. *Coins or bars.*

Whoever falsely makes, forges, or counterfeits any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States; or

Whoever passes, utters, publishes, sells, possesses, or brings into the United States any false, forged, or counterfeit coin or bar, knowing to same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph—

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

STATEMENT

Insofar as this Court is concerned, the facts of this case are simple. Yeatts was indicted for and convicted of a violation of 18 U.S.C. 485.

A coin dealer, he allegedly attempted to pass off gold coins as ones that were minted by the United States. The gold in the coins had an intrinsic value far superior to the denomination marked upon the coins.

Yeatts argued at the Circuit Court level and argues here that 18 U.S.C. 485 does not proscribe *gold* coins as one of its strictures. The argument may be summarized as follows:

> The statutory history of both Pub. L. 89-81, 31 U.S.C. 315(b), 31 U.S.C. 463 and 31 U.S.C. 446, compel the conclusion that gold coins are not coins of the United States nor are they money.

This being so, there is no subject matter jurisdiction under the Constitution of the United States, nor, in this case, did the Government prove a violation of the Statute.

We begin with the statute itself. 18 U.S.C. 485, as amended, is as follows:

> Whoever falsely makes, forges, or counterfeits any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States; or
>
> Whoever passes, utters, publishes, sells, possesses or

brings into the United States any false, forged, or counterfeit coin or bar, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph—

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

The 1965 amendment (Pub. L. 89-81) deleted "gold or silver" preceding "coins or bars" in the section catchline, and changed the description of the United States coins covered in the first paragraph from gold or silver coins to any coins of a denomination higher than five (5) cents.

The amendment was and is contained in Pub. L. 89-81. The Act is entitled, "an act to provide for the *coinage* of the United States." Emphasis added.

The legislative history (1965 U.S. Code Cong. & Adm. News, p. 2299) shows that the purpose of the Act was to conserve silver. Pub. L. 89-81 deals exclusively with *silver* coinage, the implicit realization being that only *silver coinage* exists as currency in the United States.

It specifically repeals 31 U.S.C. 462 dealing with past and future coins, and recodifies coins as legal tender (implicitly silver) in 31 U.S.C. 392. (*See* Sec. 102 of the Act; 1965 Code Cong. & Adm. News, p. 270, *et. seq.*) 31 U.S.C. 442 and 443 were repealed in 1973 (Pub. L. 93-110, Sec. 3(a) and (b), September 21, 1973; 87 Stat. 352). Section 3(b) of the Act repealed *any* law or regulation in effect that prohibited any person from dealing in gold under any circumstances.

31 U.S.C. 315(b) in pertinent part is as follows:

"No gold shall after January 30, 1934, be coined, and no gold coin shall after January 30, 1934, be paid out or delivered by the United States . . .

> All gold *coin* of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct."

31 U.S.C. 446 is a specific repealer of any law or laws inconsistent with 31 U.S.C. 315(b).

31 U.S.C. 463 flatly prohibits the payment of *any* obligation with gold—whether private or public.

31 U.S.C. 318, 319 dealing with recoinage of *gold* coins has been repealed and recoinage of coins has been authorized under 31 U.S.C. 317(c) as part of the Silver Coinage Act of 1965 (Pub. L. 89-81; 1965 Code Cong. & Adm. News, p. 270, *supra.*)

From all of the above, it is clear that 31 U.S.C. 457 making gold coins legal tender has been repealed by implication.

If there are no gold coins in circulation, if gold coins cannot be recoined, if gold coins cannot be used to pay *any* obligation, one is left with the inescapable conclusion that gold coins are no longer coins of the United States.

The mere fact that 31 U.S.C. 442 and 443 were repealed and United States citizens are now allowed to deal in gold did not and does not mean that the gold standard has been reborn or that gold coins are *currency* of the United States. *See Equitable Life Assurance Society of the U.S. v. Grovesnor,* 426 F.Supp. 67 (D.C. Tenn. 1976); *aff'd* 582 F.2d 1279 (6th Cir. 1978). In that case, the Court distinguished between gold as a commodity and gold as an index of value. *See Equitable* at 73. The reasoning is irrefutable. If, in fact, gold coins, formerly minted and issued by the United States Government, were *coins* of the United States, or *currency* of the United States, then

there would be a variation between the value of paper money and gold coins and, as a result, there would be no uniform currency within the United States. The *legal tender* conception vis-a-vis gold coins and paper money would necessitate two types of currency. This being so both in law and in fact, it is inescapable that gold coins are not money, currency or coinage of the United States.

The amendment to 18 U.S.C. 485 bears out this proposition. The word "gold" is eliminated from the heading. The amending clause, from which coin comes from, is part of a statute whose legislative history and contents deal exclusively with *silver* under the tacit assumption that only silver coinage exists in the United States, and when mention of bars is made in the enactment, it (the statute) specifically designates *gold* bars. It seems clear that 18 U.S.C. 485 punishes counterfeit *silver* coins, not gold coins, since there are no gold coins in use as money in the United States. The Constitution itself explicitly states *current* coins. *See* Article I, Sec. VIII, cl. 6.

This being so, under the peculiar facts of this case, no federal crime was committed.

There is another prong to this argument. It is of course elementary that the power of Congress to promulgate laws must be derived from the Constitution. It is also elementary that under Article I, Sec. VIII, cl. 6 (To provide for the punishment of counterfeiting the securities of *current* coin of the United States); Article I, Sec. VIII, cl. 5 (To coin money, regulate the value thereof, and of foreign coin, and fix the Standard of Weights and Measures), and finally, the necessary and proper clause for the execution of the enumerated powers (Article I, Sec. VIII, cl. 18), the Congress can enact laws using any or all of the above for jurisdictional purposes insofar as the criminal

law is concerned. *See Baender v. Barnett*, 255 U.S. 224 (1920). *Julliard v. Greenman*, 110 U.S. 421 (1884); *Legal Tender Cases*, 12 Wall. 457, 20 L.Ed. 287.

Nevertheless, Congress must have some basis for federal jurisdiction. *See United States v. Hudson & Goodwin*, 11 U.S. (7 Cranch), 32 (1812); *Logan v. United States*, 144 U.S. 283 (1892); *United States v. O'Brien*, 391 U.S. 367 (1968).

It is conceded that the explicit counterfeit clause (Article I, Sec. VIII, cl. 6) is not a limitation on Congressional power in the sense that Congress is not forbidden to make laws regulating the coinage of money and its valuation under both Article I, Sec. VIII, cl. 5 (money and value), and Article I, Sec. VIII, cl. 18 (the necessary and proper clause). *See Baender v. Barnett*, 255 U.S. 224 (1920), and cases cited therein.

Still, what jurisdiction is granted must be apparent or inferred. From the statutory and case law, cited above, it is certain that gold coins are not *current* and, therefore, not subject to regulation under Clause 6. Further, gold is not money—it is a commodity. *See Equitable Life Assurance Soc. of the United States v. Grovesnor*, 426 F.Supp. 67 (D.C. Tenn. 1976); *aff'd* 582 F.2d 1279 (6th Cir. 1978).

The very use of gold in any form as money is prohibited. 31 U.S.C. 463. Therefore, 18 U.S.C. 485 insofar as it refers to gold *coins* is a nullity since the Federal Courts have no constitutional *jurisdiction* over the subject matter.

REASONS FOR GRANTING THE WRIT

It must be understood what Defendant is charged with. For instance, he is not charged under 18 U.S.C. 486 (Whoever . . . makes or utters or passes, or attempts to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for use as *current* money, etc.).

Because, though the coins were gold and apparently resembled withdrawn U.S. coins, they were not *current*. The coins were not debased or counterfeit because they were, in fact, gold. The evidence is undisputed that the coins were bought for $2,900 (two thousand nine hundred dollars) and were to be sold for $3,300 (three thousand three hundred dollars). The government's own expert valued the coins (as is) at $3,400 (three thousand four hundred dollars). If one buys something for "X" dollars, sells it for "X plus 1", and then a party attempts to prove fraud by showing that the value of the items is "X plus 2", one is in the world of Alice. After all, the essence of fraud is the misleading. *United States v. Hay*, 545 F.2d 491 (5th Cir. 1977).

If Yeatts misrepresented the coins as genuine, there is no evidence he attempted to misrepresent their value, much less actually did so. The misrepresentation, if there be such, was not material. *United States v. Johnson*, 570 F.2d 52 (5th Cir. 1977).

The government's expert testified that it took over a year for the treasury laboratory to process an examination and propose an opinion. The collection of coins and their use for investment purposes is widespread in the country and indeed through the western world. Not only the general public, but coin dealers themselves, deserve to have this Court clarify 18 U.S.C. 485.

After all, the Circuit Court opinion means that Yeatts must go to prison for offering to sell pieces of gold for thirty-four hundred dollars ($3,400) which the government's own expert said were worth thirty-four hundred hundred dollars ($3,400)—an absurd result. Again, perhaps this Court should carefully examine any decision that purports to have discovered the philosopher's stone, i.e., has succeeded in turning silver into gold.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ E. T. M. GARLAND
EDWARD T. M. GARLAND

GARLAND, NUCKOLLS & CATTS, P.C.
1012 Candler Building
Atlanta, Georgia 30303
404/577-2225

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above-styled PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT upon Dorothy Kirkley, Acting United States Attorney, Room 1800, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303, by depositing it into the United States mail with the proper amount of postage affixed thereto to insure delivery.

This 13th day of May, 1981.

/s/ E. T. M. GARLAND
EDWARD T. M. GARLAND

Appendices

APPENDIX A

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

H. COLEMAN YEATTS,
Petitioner,

v.

UNITED STATES OF AMERICA

APPENDICES

EDWARD T. M. GARLAND
GARLAND, NUCKOLLS & CATTS, P.C.
1012 Candler Building
Atlanta, Georgia 30303
404/577-2225
Attorney for Petitioner

UNITED STATES of America,
Plaintiff-Appellee,

v.

H. Coleman YEATTS,

Defendant-Appellant.

No. 80-7253

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

Unit B

March 16, 1981.

Defendant was convicted in the United States District Court for the Northern District of Georgia, Robert L. Vining, Jr., J., of possession of counterfeit gold coins with intent to defraud and he appealed. The Court of Appeals, Frank M. Johnson, Jr., Circuit Judge, held that: (1) fact that gold coins were no longer current does not remove them from coverage of statute prohibiting possession of counterfeit coins with intent to defraud; (2) Congress has the power under the necessary and proper clause to prohibit possession of gold coins with intent to defraud even though they are no longer current; and (3) evidence sustained finding that defendant possessed the coins with intent to defraud.

Affirmed.

1. Criminal Law 977(1)

Failure of defendant to pursue at trial level his motion for judgment of acquittal notwithstanding the verdict by failing to comply with local rules of the district court requiring a supporting memorandum resulted in an abandonment of that motion.

2. Statutes 241(1)

Federal criminal statute should be construed narrowly in order to encompass only that conduct which Congress so intended to criminalize.

3. Statutes 188, 212.6

Basic canon of statutory construction is the words should be interpreted as taking their ordinary and plain meaning and Congress must be assumed to have used the words of the statute as they are commonly and ordinarily understood; statute should be interpreted according to its plain language unless a clear contrary legislative intent is shown.

4. Counterfeiting 11

Fact that gold coins may no longer be minted, circulated, or recoined nor used to pay any obligation does not preclude them from qualifying as "coins" for purposes of statute prohibiting possession of counterfeit coins, that statute does not require that the coins be current legal tender. 18 U.S.C.A. § 485.

See publication Words and Phrases for other judicial constructions and definitions.

5. Counterfeiting 11

Fact that gold coins are no longer current does not render statute prohibiting possession of counterfeit gold coins unconstitutional on theory that the coins are no longer subject to the constitutional authority of Congress to provide for the punishment for counterfeiting the securities and current coin of the United States as the prohibition is within congressional powers under the necessary and proper clause. U.S.C.A.Const. Art. I, § 8, cls. 6, 18; 18 U.S.C.A. § 485.

6. Counterfeiting 18

Evidence that defendant initially offered counterfeit coins to another without admitting that they were counterfeit and it was only after he was asked about their authenticity that he admitted they were counterfeit and evidence that defendant was evasive in responses to questions posed by the Secret Service and attempted to conceal some of the counterfeit coins was sufficient to show defendant's intent to defraud. 18 U.S.C.A. § 485.

7. Criminal Law 822(13)

Jury instruction which permitted the jurors to draw from the facts in evidence such reasonable inferences as they found justified in the light of experience did not improperly permit them to consider evidence outside the record, especially in view of specific instructions to consider only the evidence admitted in the case.

8. Criminal Law 745

Jury may draw reasonable inferences from the evidence presented in the case.

9. Criminal Law 1038.1(1)

Where no objection is made to the instruction, court may reverse only if plain error is present. Fed.Rules Cr. Proc. Rule 52(b), 18 U.S.C.A.

Edward T. M. Garland, Atlanta, Ga., for defendant-appellant.

William L. Harper, U. S. Atty., William R. Toliver, Asst. U. S. Atty., Atlanta, Ga., for plaintiff-appellee.

Appeal from the United States District Court for the Northern District of Georgia.

Before RONEY, FRANK M. JOHNSON, Jr. and HENDERSON, Circuit Judges.

FRANK M. JOHNSON, Jr., Circuit Judge:

Appellant H. Coleman Yeatts was convicted, after trial by jury, for possession of counterfeit United States gold coins with intent to defraud in violation of 18 U.S.C.A. § 485.[1] He appeals, urging four grounds of error. First, he claims that the trial court erred in denying his motion for judgment of acquittal notwithstanding the verdict. Second, he contends that possession of counterfeit United States gold coins with intent to defraud is not a criminal offense within the meaning of Section 485. Third, he argues that the evidence was insufficient to show that he had the requisite intent to defraud. Last, he contends that the jury instructions constituted plain error by permitting the jury to consider evidence outside the record. We find no reversible error and accordingly affirm.

Yeatts is a professional coin and stamp dealer. He was a booth holder at a stamp trade show in Atlanta on February 24, 1978, when he offered to sell what appeared to be 10 to 15 United States gold coins to another booth holder, Harold Miller. Miller, also a professional coin and

[1] Title 18 U.S.C.A. § 485 provides:

Whoever falsely makes, forges, or counterfeits any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States; or

Whoever passes, utters, publishes, sells, possesses, or brings into the United States any false, forged, or counterfeit coin or bar, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph—

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

stamp dealer, was suspicious of the authenticity of the coins and questioned Yeatts about them. Yeatts admitted to Miller that he knew that those coins were counterfeit. Yeatts also indicated that he sold those types of coins to the "jewelry trade" and to other people who were not aware of the true nature of such coins. Yeatts then told Miller that he had given Miller the wrong group of coins and showed Miller another group of coins. Miller, again suspicious, questioned Yeatts about the authenticity of the second group of coins. Yeatts admitted that those coins were also probably counterfeit but stated that he felt that the coins were "good enough to pass." Miller then contacted the Atlanta office of the United States Secret Service.

Two Secret Service agents arrived at the stamp show and went to Yeatts' booth and asked him to step into the hallway. When they told Yeatts that they were investigating information that he possessed counterfeit coins, Yeatts told the agents that he was not aware that he possessed any counterfeit coins. The agents then asked Yeatts to show them the coins that he had and Yeatts went to his booth and returned to the hallway carrying 8 to 10 coins. When asked if he had any more coins, Yeatts admitted that he did and also admitted that he had been told by another dealer that the other coins might be counterfeit.

Yeatts then returned to his booth, accompanied by one of the agents. That agent observed Yeatts attempt to hide some of the coins, which were in two stacks in a box on the floor of the booth. Yeatts pushed one stack to a corner of the box and removed only one stack, and then started to leave the booth. Yeatts took the second stack out of the box only after the agent pointed out that he

had forgotten one stack. Yeatts took the coins, about 35 in all, into the hallway where Miller examined them and stated that 27 of them appeared to be counterfeit. Yeatts surrendered the 27 coins to the agents.

Subsequent testing of the coins by the United States Bureau of Mint disclosed that the coins were indeed counterfeit.[2]

Appellant filed a motion for judgment of acquittal notwithstanding the verdict on February 20, 1980. However, he failed to accompany his motion with a memorandum of law citing supporting authorities and allegations of fact relied upon and required by the local rules of the district court.[3] On March 27, 1980, the date of sentencing, appellant's counsel inquired about the status of the motion and the district court instructed him to supply the required memorandum by the following Friday, April 4, 1980. The court stated that it would reserve its ruling until it had reviewed appellant's supporting memorandum. There is no indication in the record that appellant ever filed such a memorandum. As a result of appellant's omission, no final order with respect to this motion was entered on the docket.

[1] Because appellant declined to pursue at the trial court level his motion for judgment of acquittal notwithstanding the verdict by failing to comply with the local rules of the district court, appellant effectively abandoned his motion. *See United States v. Mireles*, 570 F.2d 1287, 1290 (5th Cir. 1978) (where defense counsel failed to re-

---

[2] The coins in question were all in resemblance and similitude of genuine United States gold coins in the following denominations: $1.00 gold pieces; $2.50 Liberties; $5.00 Indians; and $10.00 Indians.

[3] United States District Court for the Northern District of Georgia Local Rule 9.1.

quest ruling on motion to suppress evidence or move for directed verdict of acquittal and no ruling was ever made, defendant effectively abandoned suppression motion). Failure to reach this issue, which is not properly before the Court, will not foster a manifest miscarriage of justice since, after carefully reviewing the record for plain error, we conclude that no plain error was committed. *See* Fed. R.Crim.P.52(b). Even if we review the evidence under a less stringent standard of review, as we will demonstrate in our discussion of appellant's contentions regarding the sufficiency of the evidence, we conclude that appellant's conviction is fully supported by the evidence.

Appellant contends that because, under United States law, gold coins may no longer be minted, circulated, or recoined, nor may they be used to pay any obligation, gold coins are no longer coins of the United States within the meaning of 18 U.S.C.A. § 485.

[2, 3] We are aided in the interpretation of Section 485 by several principles of statutory construction. A federal criminal statute should be construed narrowly in order to encompass only that conduct that Congress so intended to criminalize. *Dunn v. United States*, 442 U.S. 100, 112, 99 S.Ct. 2190, 2191, 60 L.Ed.2d 743 (1979). A basic canon of statutory construction is that words should be interpreted as taking their ordinary and plain meaning. *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 314, 62 L.Ed.2d 199 (1980). We must assume that Congress used the words of the statute as they are commonly and ordinarily understood. *United States v. Porter*, 591 F.2d 1048, 1053 (5th Cir. 1979). A statute should ordinarily be interpreted according to its plain language, unless a clear contrary legislative intention is shown. *United States v. Apfelbaum*, 445 U.S. 115, 121, 100 S.Ct. 948, 952, 63

L.Ed.2d 250 (1980).

[4] After carefully considering the language of Section 485, we conclude that counterfeit United States gold coins are within the scope of that section.

The word "coin" in Section 485, with respect to the counterfeiting of any coins in resemblance and similitude of any gold or silver United States coin, is not expressly qualified or restricted in such a manner as to require that the counterfeit coin be in resemblance or similitude of a coin which is a current United States coin or which is legal tender. However, paragraph one of that section specifically limits the scope of the statute, with respect to counterfeit *foreign* gold and silver coins, to coins "in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States."

We believe that Congress' failure to expressly restrict the scope of Section 485 with respect to counterfeit gold or silver United States coins to *current* coins or legal tender is significant. The language of the section indicates that Congress intended to cover the counterfeiting of any gold coin which was stamped or coined by a United States mint.[4] The coins at issue in this case clearly fall within the language of Section 485: "any coin . . . in resemblance or similitude of any coin of a denomination higher than 5 cents . . . coined at any mint or assay office of the United States." 18 U.S.C.A. § 485. The second paragraph of Section 485 does not require that United States coins be com-

---

[4] Former Section 277, 18 U.S.C. § 277 (1940), from which the present Section 485 is derived, prohibited the counterfeiting of "any coin or bars in resemblance or similitude of the gold or silver coins or bars which have been, or hereafter may be, coined or stamped at the mints and assay offices of the United States."

posed of a particular metal, nor are gold coins specifically excluded.

Yeatts argues that gold coins, which were formerly minted in the United States and then withdrawn from circulation by the Gold Reserve Act of 1934 [5] are no longer legal tender and, therefore, no longer coins of the United States. Section 485, however, does not require that gold coins be current legal tender.

Title 18 U.S.C.A. § 486 prohibits the making, uttering or passing of any coins made of gold, silver, or any other metal or alloy of metals "intended for use as current money." This Circuit held that former Section 281 of Title 18, upon which the present Section 486 is based, did not repeal former Section 277 of Title 18, upon which the present Section 485 is based. *Curran v. Sanford*, 145 F.2d 229, 230 (5th Cir. 1944). This Court stated that former Sections 281 and 277 define similar but not identical offenses. Had Congress intended to restrict present Section 485 to "current money" of the United States, or to coins in actual use and circulation as money within the United States, or to legal tender, we believe that it would have so stated in the statute.[6]

---

[5] Gold Reserve Act of 1934, ch. 6, 48 Stat. 337 (codified in scattered sections of 12, 31 U.S.C.A.). *See* 31 U.S.C.A. § 440.

[6] *See United States v. Mock*, 143 F.Supp. 661, 663-64 (N.D.Cal. 1956).

Section 485 was revised by Congress on June 25, 1948, ch. 645, 62 Stat. 708, and again on July 23, 1965, Pub.L. 89-91, 79 Stat. 257. On neither occasion did Congress choose to indicate that this section was restricted to current coins or legal tender. Pub.L. 89-91, the 1965 amendments, deleted "Gold or silver" preceding "Coins or bars" in the section catch line, changed the description of the United States coins covered in the first paragraph from gold or silver coins to any coin of a denomination higher than five cents, and made minor structural changes in the second paragraph. The 1965 amendments were

[5] Appellant also argues that the application of the prohibitions of Section 485 to gold coins is unconstitutional. He contends that because gold coins are not current they are not subject to regulations under U.S. Const. Art. I, § 8, cl. 6, which empowers Congress to "provide for the Punishment of counterfeiting the Securities and current Coin of the United States." Appellant's argument is without merit. Article I, § 8, cl. 18, grants Congress the power to "make all laws which shall be necessary and proper for carrying into Execution" the specific legislative powers granted to Congress by Article I, § 8 itself. We hold that Congress had the constitutional power, under Art. I, § 8, cl. 6, and the necessary and proper clause, Art. I, § 8, cl. 18, to enact 18 U.S.C.A. § 485, thus prohibiting the counterfeiting of gold coins which are no longer in circulation as current coins. Congress had a rational basis for protecting the integrity of non-current gold United States coins. Such coins have value in that the owner may redeem gold coins for current money. These coins also have historic and numismatic value.

To determine whether the evidence is sufficient to support a guilty verdict, we must view the evidence in the light most favorable to the Government, *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942), and all credibility choices must be considered in support of the jury verdict. *United States v. Conway*, 632 F.2d 641, 643 (5th Cir. 1980). The standard of review for the sufficiency of the evidence supporting a guilty verdict is

---

made in order to cover coins of any denomination in excess of five cents, thus including "clad" coins which are made of a copper core between layers of cupro-nickel. The purpose of those amendments was to expand the scope of Section 485 to include clad coins. H.R. Rep.No.509, 89th Cong., 1st Sess. 2, *reprinted in* [1965] U.S.Code Cong. & Ad.News 2299, 2310.

whether a reasonably minded jury must necessarily entertain a reasonable doubt of the defendant's guilt. *United States v. Kelley*, 630 F.2d 302, 303 (5th Cir. 1980).

[6] Appellant contends that no intent to defraud on the part of appellant was proved. However, the record in this case reveals clear evidence of Yeatts' intent to defraud. Yeatts initially offered the counterfeit coins to Miller without admitting to Miller that they were counterfeit; it was only after Miller asked about the authenticity of the coins that Yeatts admitted that the coins were counterfeit. Additionally, Yeatts was evasive in response to questions posed by the Secret Service agents and attempted to conceal some of the counterfeit coins from them. These circumstances, particularly Yeatts' admission to Miller, offer sufficient evidence of appellant's intent to defraud.

[7, 8] Appellant argues that the trial judge erred by giving a jury instruction that permitted the jury to consider evidence outside the record. Appellant's argument is based on one portion of the instruction, taken out of context. The district court merely instructed the jurors that they could draw from the facts in evidence such reasonable inferences as they found justified in the light of experience. It is well settled that a jury may draw reasonable inferences from the evidence presented in the case. *See United States v. Gainey*, 380 U.S. 63, 85 S.Ct. 754, 13 L.Ed.2d 658 (1964). The district court specifically charged the jury to consider only the evidence admitted in the case, and further charged them not to consider any evidence to which an objection was sustained, which was ordered stricken from the record, or which may have been seen or heard outside the courtroom.

[9] In reviewing the adequacy of a challenged jury instruction, this Court must view the charge in its entirety and determine whether, taken as a whole, the issues and the law presented to the jury were adequate. *United States v. Abravaya,* 616 F.2d 250, 251 (5th Cir. 1980); *United States v. Brooks,* 611 F.2d 614 (5th Cir. 1980). However, where, as here, no objection to the instruction was made at trial as required by Fed.R.Crim.P. 52(b), this Court may reverse only if plain error was present. *United States v. Abravaya, supra,* 616 F.2d at 251. The jury instructions were not in error and, taken as a whole, were clearly adequate.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT B

NO. 80-7253

[U.S. COURT OF APPEALS
Filed Apr. 13, 1981, GILBERT F. GANUCHEAU, Clerk]

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

H. COLEMAN YEATTS,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia

---

ON PETITION FOR REHEARING

(April 13, 1981)

Before RONEY, FRANK M. JOHNSON, JR. and HENDERSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed

in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ FRANK M. JOHNSON, JR.
United States Circuit Judge

CLERK'S NOTE:
SEE RULE 41 FRAP AND LOCAL RULE 17 FOR STAY OF THE MANDATE

2j4

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNIT B

NO. 80-7253

[U.S. COURT OF APPEALS

Filed Apr. 22, 1981, GILBERT F. GANUCHEAU, Clerk]

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

H. COLEMAN YEATTS,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia

---

O R D E R:

( ) The motion of appellant _____ for stay of the issuance of the mandate pending petition for writ of certiorari is DENIED. See Fifth Circuit Local Rule 17, as amended January 22, 1979.

(X) The motion of appellant _____ for stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including May 13, 1981, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay

granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of _____ for a further stay of the issuance of the mandate is GRANTED to and including _____ _____, under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of _____ _____ for a further stay of the issuance of the mandate is DENIED.

/s/ FRANK M. JOHNSON, JR.
United States Circuit Judge

2j12 a

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT B

NO. 80-7253
Summary Calendar

D. C. DOCKET NO. 79-249-A

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

R. COLEMAN YEATTS,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia

---

Before RONEY, FRANK M. JOHNSON, Jr. and HENDERSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the conviction of the said District Court in this cause be, and the same is hereby, affirmed.

March 16, 1981

ISSUED AS MANDATE:

§ 315b. Gold coinage discontinued; existing gold coins withdrawn from circulation; coins and gold to be formed into bars

No gold shall after January 30, 1934, be coined, and no gold coin shall after January 30, 1934, be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with section 367 of this title. All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

Jan. 30, 1934, c. 6, §5, 48 Stat. 340.

§ 317c. Recoinage and sale of worn and uncurrent coins

The Secretary of the Treasury shall cause all worn and uncurrent coin of the United States, heretofore or hereafter issued, received in the Treasury, to be melted down, the resulting metal and material to be used for coinage or sold, which sale is hereby authorized. Such coin (including any metal and material derived therefrom), and any loss resulting from the difference between the nominal or face value of such coin and the amount the same will produce in new coin, and any loss resulting from the sale of the metal or other material, shall be accounted for by entries in the fund established for the purchase of metal for coinage and said fund shall be reimbursed out of the special fund denominated the coinage profit fund: *Provided,* That the value of any coin (including any metal and material derived therefrom) accounted for as provided herein shall not be considered for the purpose of determining the statutory limit of the fund established for the purchase of metal for coinage. The proceeds from

any sale pursuant to this section shall be accounted for by entries in the fund established for the purchase of metal for coinage.

§ 392. Legal tender

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues.

Pub.L. 89-81, Title I, § 102, July 23, 1965, 79 Stat. 255.

§ 462. Repealed. Pub.L.89-81, Title II, § 210, July 23, 1965, 79 Stat. 257

§ 463. Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies

(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any

such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this section, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

June 5, 1933, c. 48, § 1, 48 Stat. 113.

§ 485. Coins or bars

Whoever falsely makes, forges, or counterfeits any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States; or

Whoever passes, utters, publishes, sells, possesses, or brings into the United States any false, forged, or counterfeit coin or bar, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph –

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

June 25, 1948, c. 645, 62 Stat. 708; July 23, 1965, Pub.L. 89-81, Title II, § 211(a), 79 Stat. 257.

§ 486. Uttering coins of gold, silver or other metal

Whoever, except as authorized by law, makes or utters

or passes, or attempts to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for use as current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined not more than $3,000 or imprisoned not more than five years, or both.

June 25, 1948, c. 645, 62 Stat. 709.